UPREME COURT, U. S.

Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

No. 358

EUGENE J. HANON, GLORIA MEYER and JOHN L. BOVERI,
Petitioners,

v.

UNITED STATES OF AMERICA,
Respondent.

REPLY MEMORANDUM

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In its Memorandum in Opposition the United States suggests that because the issue in this case is related to those presented in **Angelini** and **Mackey**, the Court may wish to defer disposition of the instant petition until after those cases are decided. In those cases the retroactivity of the wagering tax provisions is before the Court in a different context than here; nowhere are the search warrant aspects of the instant case presented. This plus the other issues in those cases means that those decisions would not necessarily dispose of the questions raised here by the post-

Marchetti-Grosso use of evidence seized pursuant to pre-**Marchetti-Grosso** search warrants based on the putative wrongdoer's assertion of his Fifth Amendment privilege i. e. his failure to file incriminating wagering tax information about himself. Neither would **Angelini** and **Mackey** necessarily resolve the conflict which has already developed in the state courts (see Petition, p. 6) and presently exists between the members of the Eighth Circuit sitting *en banc*. As said by the Solicitor General in his Petition for a Writ of Certiorari in **United States v. Lucia**, No. 186, this Term, p. 6, where another aspect of the same general question of retroactivity was ruled by the Fifth Circuit *en banc*, "The question is an important and recurring one—as the volume of litigation thereon shows—and thus warrants resolution by this Court."

For the reasons stated, the petition should be granted so that this serious aspect of the total question can be canvassed and ruled harmoniously with **Angelini** and **Mackey**. It deserves to be decided upon the imprimatur of importance contained in its own careful record which the Eighth Circuit has already ordered twice argued and briefed.

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